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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,713	02/19/2004	Michael J. Deutsch	720382.00004	5559

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EXAMINER

RYCKMAN, MELISSA K

ART UNIT PAPER NUMBER

3734

DATE MAILED: 10/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/782,713

Applicant(s)

DEUTSCH, MICHAEL J.

Examiner

Melissa Ryckman

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 6, 14-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8-3-04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

Claims 6, 14-16 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 8/29/06.

Applicant's election of Species 1 in the reply filed on 8/29/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1-5, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce (U.S. Patent No. 4,825,866), further in view of Cartmell et al. (5,947,998).

Regarding claim 1, Pierce discloses a kit for incision closure comprising: at least two trimmable (10), sterile flexible incision flanking strips having a first skin contacting side (36) and a second fastener side (20, col. 2 ll. 27) having hook or loop fasteners; and at least one trimmable (16), sterile flexible spanning element having a skin facing side having hook or loop fasteners releasably mating with the hook or loop (16, col. 2 ll. 23) fasteners of the incision flanking sides to span the incision contacting each of the incisions flanking sides to draw the incision together. Pierce does not have a closed internally sterile package, however Cartmell et al. has a sterile package for wound closure strips (col. 6 ll. 43).

It would have been obvious to one of ordinary skill in the art to put the claimed invention in an internally sterile package, as this would be appropriate for use in sterile operating room areas. A sterile package allows handling of the claimed invention as to not contaminate the device.

Regarding claim 2, Pierce discloses the claimed invention stating there would be size variations for different components based on the application (col. 1 ll. 66-68). Pierce is silent regarding the dimensions of the flanking strip, and does not specifically state 20 cm long. However it would have been obvious to one of ordinary skill in the art to make the strips be the size for appropriate for a specific application as different sizes of the claimed invention would be for different uses.

Regarding claim 3, Pierce discloses a kit for incision closure wherein the flanking strips provide cutouts on one side spaced along their length (Fig. 1) allowing curvature of the strip along a plane of the strip with reduced buckling (col. 1 ll. 42,43 and col. 2 ll. 46).

Regarding claim 4, Pierce discloses a kit for incision closure wherein the flanking strips are loop portions of the hook and loop fastener and the spanning element is a hook portion of the hook and loop fasteners (col. 2 ll. 23-27).

Regarding claim 5, Pierce discloses a kit for incision closure wherein the spanning element is a set of strips (Fig. 1).

Regarding claim 12, Pierce discloses a kit for incision closure wherein the flanking strips have a pressure sensitive adhesive on a side to contact a patient's skin (col. 2 ll. 44-47).

Claims 7-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce (U.S. Patent No. 4,825,866) and Cartmell et al. (5,947,998) as applied to claim 1 above, and further in view of Haverstock (U.S. Patent No. 4,976,726).

Pierce and Cartmell et al. disclose the claimed invention except the flanking strips do not include printed indicia. However regarding claim 7, Haverstock teaches a incision closure device with flanking strips (32) that include printed indicia on one side indicating use of the flanking strips (col. 4 ll. 59-62). Regarding claim 8, Haverstock teaches a printed indicia that indicates a side of the flanking strip that is to be away from

the skin (col. 4 ll. 59-62). Regarding claim 9, Haverstock teaches a printed indicia that indicates a side of the flanking strip that is to be away from an incision edge (Fig. 3, col. 4 ll. 59-62), as the indicators only go to the incision edge and not the outer edge.

Regarding claim 10, Haverstock teaches the printed-indicia is a stitch line indicating a preferred location of stitches or staples attaching the flanking strip to the skin (Fig. 4).

Regarding claim 11, Haverstock teaches the printed indicia indicates a side of the flanking strip that is to be away from an incision edge and the stitch line is near a side of the flanking strip away from the incision edge as marked (Fig. 3, col. 4 ll. 59-62), as the indicators only go to the incision edge and not the outer edge.

It would have been obvious to one of ordinary skill in the art to include indicia on the closure device, as the indicia can help in the ease of use and can help to insure the proper use of the device.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pierce (U.S. Patent No. 4,825,866) and Cartmell et al. (5,947,998) as applied to claim 1 above, and further in view of Grossman (U.S. Patent No: 6,923,320).

Regarding claim 13, Pierce and Cartmell et al. disclose the flanking strips (10) and spanning element (16) but it is not treated with an antimicrobial material. However, Grossman teaches a flexible strip that possesses antimicrobial properties (para. 128).

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It would have been obvious to one of ordinary skill in the art to treat the flanking strips and spanning element with antimicrobial material, as this can help to prevent infection by preventing migration of microorganisms to the wound.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(U.S. Pub. No. 2003/0163160) O'Malley et al. discloses a system and method for moving and stretching plastic tissue.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571)-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER